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***INACTIVE**

August 23, 2005

**VIA FACSIMILE &
FIRST CLASS MAIL**

David B. Tulchin, Esquire
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004

RE: Cheeseman v. Microsoft Corp., No. 1:00-cv-1269-JFM (D. MD)

Dear David,


Rick Pepperman called my attention to some letters you have written to me concerning the *Cheeseman* case. I have found both your letters regarding the dismissal of that action. I am sorry I did not get back to you sooner, but I was enjoying an extended vacation in Maine with my family. As you might imagine, it has taken me some time to catch up on all the demands that piled up on my desk while I was away. I am sure you can readily appreciate the situation and I apologize for the delay in responding.

As to the issue of moving to dismiss the *Cheeseman* case, we cannot make such a motion at this point. Your colleague, Rick Pepperman, was very clear in making the point that the settlement of the *Elkins* matter will not be resolved until Microsoft accomplishes an appeal of the Superior Court's decision on attorneys' fees to the Vermont Supreme Court. As Rick stated, Microsoft has employed this strategy in every jurisdiction where fees were subject to litigation and Microsoft will do the same in this case as well. In my experience, resolution of a case that is appealed to the Vermont Supreme Court takes anywhere between six months and a year (and sometimes longer). Since Rick indicated that Microsoft will be appealing the Superior Court's decision on attorneys' fees regardless of the outcome, we will have to estimate that the *Elkins* case won't achieve finality until sometime in late 2006 at the very earliest.

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Rick mentioned that you have been receiving pressure from Judge Motz regarding the resolution of the cases before him. If you would like to have a joint call with Judge Motz so we can explain the situation, I would be happy to make myself available.

Best regards,

A handwritten signature in black ink, appearing to read 'J. B. Perkinson', with a long horizontal flourish extending to the right.

Jacob B. Perkinson

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FACSIMILE TRANSMITTAL SHEET

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|------------------------|-------------------------------------|
| TO: | FROM: |
| David B. Tulchin, Esq. | Jacob B. Perkinson, Esq. |
| FAX NUMBER: | DATE: |
| (212) 558-3588 | 8/23/05 |
| PHONE NUMBER: | TOTAL NO. OF PAGES INCLUDING COVER: |
| (212) 558-4000 | 3 |
| RE: | |
| Microsoft | |
| NOTES/COMMENTS: | |

Please see attached.

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